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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
| 08/899,410 | 07/23/97 | GALLOWAY | D |

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IM22/0903

 EXAMINER

DYE, R

| | |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
| 1772 | <i>27</i> |

DATE MAILED: 09/03/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

| | | | |
|-----------------|------------|----------------|-----------------|
| Application No. | 08/899,410 | Applicant(s) | Galloway et al. |
| Examiner | R. Dye | Group Art Unit | 1772 |

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address---

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

Responsive to communication(s) filed on 7-15-99

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

Claim(s) 1-2, 4-13, 15, 16 and 21 is/are pending in the application.

Of the above claim(s) _____ is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) 1-2, 4-13, 15, 16 and 21 is/are rejected.

Claim(s) _____ is/are objected to.

Claim(s) _____ are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The proposed drawing correction, filed on _____ is approved disapproved.

The drawing(s) filed on _____ is/are objected to by the Examiner.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All Some* None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) _____

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

Information Disclosure Statement(s), PTO-1449, Paper No(s). 19-20 Interview Summary, PTO-413

Notice of References Cited, PTO-892 Notice of Informal Patent Application, PTO-152

Notice of Draftsperson's Patent Drawing Review, PTO-948 Other _____

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DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claim 21 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 21 is indefinite because it depends from canceled claim 17.

Claim Rejections - 35 USC § 102 & 35 USC § 103

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

3. Claims 1,2,11,12 and 13 are rejected under 35 U.S.C. 102(e) as being anticipated by WO 95/00333.

WO '333 teaches a multilayer structure of at least three layers wherein the core layer is a barrier layer. In one embodiment there may be a first and second outer layer of an ethylene or propylene polymer or copolymer formed by a polymerization reaction in the presence a single cell catalyst and a barrier layer (second para.). The core barrier layer 14 may be made of ethylene

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vinyl alcohol (second para.). After the film is formed it may be subjected to electron beam irradiation (page 17, lines last para.). WO '333 teaches bags or packages made from the multiple layer film.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4-10,15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 95/00333.

WO '333 has been previously discussed and fails to specifically teach the recited thicknesses. Since WO '333 teaches a multilayer film for packaging, as that disclosed in Applicant's patent application, the recited thicknesses would have been well within the purview of one having ordinary skill in the art. Furthermore, the recited thicknesses would have been obvious to one having ordinary skill in the art based upon the desired degree of barrier property, strength and flexibility.

6. Claims 1,2,11,12 and 13 are rejected under 35 U.S.C. 102(e) as being anticipated by Georgelos (US 5,397,613).

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Georgelos teaches a multilayer structure of at least three layers wherein the core layer is a barrier layer. The ethylene alpha olefin resins used to manufacture the films may be prepared by a homogeneous metallocene single-site catalyst system (column 4, lines 5-28; Example 5). The core barrier layer may be made of a hydrolyzed ethylene vinyl acetate (ethylene vinyl alcohol) (Column 25). After the film is formed it may be subjected to electron beam irradiation (column 26). Georgelos teaches bags or packages made from the multiple layer film (column 1). The overall thickness of the films may be about 2 mils. The heat sealable outer layer thickness was about 1.2 mils and the abuse resistant outer layer was about 0.6 mils thick (Example 5).

7. Claims 4-10,15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Georgelos (US 5,397,613).

Georgelos has been previously discussed and fails to specifically teach the recited thicknesses. Since Georgelos teaches a multilayer film for packaging, as that disclosed in Applicant's patent application, the recited thicknesses would have been well within the purview of one having ordinary skill in the art. Furthermore, the recited thicknesses would have been obvious to one having ordinary skill in the art based upon the desired degree of barrier property, strength and flexibility.

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to R. Dye whose telephone number is (703) 308-4331.



Rena L. Dye
Primary Examiner
Tech Center 1700

R. Dye
September 1, 1999